

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TENNESSEE  
KNOXVILLE DIVISION**

|   |   |                           |
|---|---|---------------------------|
| -----   | X |                           |
|   | : |                           |
| LEWIS COSBY, KENNETH R. MARTIN, as              | : | No. 3:16-cv-00121-TAV-DCP |
| beneficiary of the Kenneth Ray Martin Roth IRA, | : |                           |
| and MARTIN WEAKLEY on behalf of themselves      | : |                           |
| and all others similarly situated,              | : |                           |
|   | : |                           |
| Plaintiffs,                                     | : |                           |
|   | : |                           |
| v.  | : |                           |
|   | : |                           |
| KPMG LLP,                                       | : |                           |
|   | : |                           |
| Defendant.                                      | : |                           |
| -----   | X |                           |

**JOINT STATUS REPORT**

Pursuant to paragraph 3 the Modified Scheduling Order (ECF No. 96) and Order (ECF No. 212), Court-appointed Lead Plaintiffs and Class Representatives, Lewis Cosby, Eric Montague and Martin Ziesman, as Co-Trustee for the Carolyn K. Ziesman Revocable Trust, and Defendant KPMG LLP (“KPMG”, together with the Lead Plaintiffs, the “Parties”), jointly submit this status report to the Court and request that the Court enter the [Proposed] Third Scheduling Order filed herewith.

**DISCOVERY STATUS**

On February 15, 2019, the Court entered a Modified Scheduling Order. The Modified Scheduling Order set forth the following relevant discovery deadlines:

1. Completion of Document Production: April 5, 2019;
2. Completion of Fact Discovery: June 28, 2019;
3. Plaintiffs’ Expert Reports: July 1, 2019;
4. Defendant’s Rebuttal Expert Reports: August 2, 2019;
5. Plaintiffs’ Reply Expert Reports: August 22, 2019; and
6. Completion of Expert Discovery: September 9, 2019.

On March 19, 2019, the Court entered a stay of all non-Class related discovery in the case pending resolution of Plaintiffs' Motion to Certify the Classes, Appoint Class Representatives, and Appoint Class Counsel (the "Stay Order"). ECF No. 109. After certifying the Class, the Court entered an Order on May 7, 2021, which lifted the stay (the "Stay Lift Order"). ECF No. 212. In that Stay Lift Order, the Court set a trial date of February 8, 2022, and stated that "[a]ny unexpired scheduling deadlines as of the date of entry of this order shall be applied as calculated from the new trial date and according to the same time limitations set forth in the Court's Modified Scheduling Order [Doc. 96]." *Id.* Pursuant to the Court's instruction, the "unexpired" discovery deadlines would be set as the following:

1. Completion of Document Production: May 1, 2021;
2. Completion of Fact Discovery: July 24, 2021;
3. Plaintiffs' Expert Reports: July 27, 2021;
4. Defendant's Rebuttal Expert Reports: August 28, 2021;
5. Plaintiffs' Reply Expert Reports: September 17, 2021; and
6. Completion of Expert Discovery: October 5, 2021.

These re-calculated deadlines are not viable. For example, the re-calculated deadline for the completion of document production (May 1) had already passed by the date of the Stay Lift Order (May 7, 2021), but document production was not complete when the Court entered the Stay Order and therefore remained incomplete when the stay was lifted on May 7, 2021. At that time, KPMG had produced documents that it had previously produced to the SEC or that were related to the SEC investigation, primarily consisting of its 2011 workpapers, electronic discovery and transcripts of SEC testimony. However, as of the date the Stay Order was entered, KPMG had not yet produced any workpapers for 2012-2014 and the Parties had not yet finalized an agreement on

search terms and custodians for the collection, review, and production of electronic documents.<sup>1</sup> The parties have made substantial progress in negotiating these terms and hope to reach final agreement shortly. Depositions have not started – and cannot start – until the parties finalize their agreement on the scope of electronic discovery, and KPMG completes its document production. The parties (and their experts) will then require need time to review the party and relevant third-party document productions prior to beginning depositions.

Immediately following the Stay Lift Order, KPMG filed a Rule 23(f) Petition to the Sixth Circuit and moved to stay this action pending resolution of its Rule 23(f) Petition in both the Sixth Circuit and in this Court. This Court denied KPMG’s motion to stay on June 29, 2021. The Sixth Circuit has not yet ruled on KPMG’s motion to stay or on its Rule 23(f) Petition. Simultaneously, the parties met and conferred numerous times regarding document production, and KPMG has made multiple productions to Plaintiffs. On July 2 and July 7, 2021, KPMG produced its 2012-2014 workpapers and certain other categories of documents, totaling approximately 30,000 pages of documents. KPMG is currently in the process of reviewing voluminous documents collected based on the parties’ near-final agreement on search terms and custodians, and KPMG anticipates producing the remaining responsive, non-privileged documents agreed upon by September 10, 2021.

In light of the foregoing, the Parties jointly propose that the following deadlines be entered, as set forth in the attached [Proposed] Third Scheduling Order. The [Proposed] Third Scheduling Order maintains approximately the same period of time between deadlines as set forth in the

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<sup>1</sup> Relatedly, given the Stay Order, Plaintiffs were unable to complete negotiations with multiple third parties regarding their productions in response to Plaintiffs’ subpoenas. Those third party documents are necessary for at least one of Plaintiffs’ expert reports.

Modified Scheduling Order (with modifications to avoid the Thanksgiving and Christmas holidays):

1. Completion of Document Production: September 10, 2021;
2. Completion of Fact Discovery: December 8, 2021;
3. Plaintiffs' Expert Reports: December 23, 2021;
4. Defendant's Rebuttal Expert Reports: January 24, 2022;
5. Plaintiffs' Reply Expert Reports: February 14, 2022; and
6. Completion of Expert Discovery: March 4, 2022.

### **DISPOSITIVE AND PRETRIAL MOTIONS**

At this time, there are no dispositive motions pending. The Parties do, however, anticipate filing motions for summary judgment. The Parties also anticipate filing pretrial motions, including motions *in limine*. At this time, without completion of fact discovery, the Parties cannot yet anticipate the subject matter of those motions.

### **TYPE AND LENGTH OF TRIAL**

The case will be tried to a jury, and the Parties anticipate that the trial will take approximately two weeks.

### **PROSPECTS FOR SETTLEMENT AND MEDIATION**

On July 15, 2021, the Parties held a private mediation session with Mr. Robert Myers of JAMS. Mr. Meyers has a background in audit related litigation. While the Parties were unsuccessful in resolving the case at that time, the Parties believe that a resolution of this matter may still be possible. No new mediation dates have been scheduled.

Dated: August 3, 2021

COHEN MILSTEIN SELLERS & TOLL  
PLLC

Laura H. Posner  
88 Pine Street, 14th Floor  
New York, NY 10005  
Telephone: 212-838-7797  
Email: lposner@cohenmilstein.com

COHEN MILSTEIN SELLERS & TOLL  
PLLC

Steven J. Toll  
Allen Dreschel  
1100 New York Ave NW, Suite 500  
Washington, DC 20005  
Telephone: 202-408-4600  
Fax: 202-408-4699  
Email: stoll@cohenmilstein.com  
Email: adreschel@cohenmilstein.com

GORDON BALL

Gordon Ball  
550 W. Main Street  
Suite 600  
Knoxville, TN 37902  
Telephone: 865-525-7029  
Email: gball@gordonball.com

*Counsel for Plaintiffs*

Respectfully submitted,

/s/ Gregory G. Ballard

MCDERMOTT WILL & EMERY LLP  
Gregory G. Ballard (admitted *pro hac vice*)  
One Vanderbilt Avenue  
New York, NY 10017  
Telephone: 212-547-5330  
Email: gballard@mwe.com

WALLER LANSDEN DORTCH & DAVIS, LLP

Paul S. Davidson (TN BPR # 011789)  
511 Union Street, Suite 2700  
Nashville, TN 37219  
Telephone: 615-244-6380  
Email: paul.davidson@wallerlaw.com

LEWIS ROCA ROTHGERBER CHRISTIE LLP

Gary F. Bendinger (admitted *pro hac vice*)  
201 East Washington Street, Suite 1200  
Phoenix, AZ 85004  
Telephone: 602-262-5353  
Email: gbendinger@lrrc.com

*Counsel for Defendant KPMG LLP*